A-F-R.

(79)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5704/2000

R.V.Magar

Vs.

Union of India & Others

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble the Chief Justice

Sd/-
Chief Justice

Post for Judgment on 29.08.2006

Sd/-
(JUDGE)
29.08.2006

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No. 5704/2000

CORAM: Hon'ble Shri S.R.Nayak, Chief Justice &
Hon'ble Shri D.R.Deshmukh, J.

PETITIONER : R.V.Magar, S/o Shri Vasant Rao Magar, aged about 53 years, r/o 16, New Shankar Nagar, Durg (M.P.).

Versus

RESPONDENTS: : 1. Union of India, through (Administrative) (Personnel), 187, Board Postal Services, Dak Bhavan, NEW DELHI.

: 2. Director, Postal Services, Raipur Region, RAIPUR (M.P.).

: 3. Senior Superintendent of Post Offices, Raipur Division, RAIPUR (M.P.)

: 4. Central Administrative Tribunal, Jabalpur Bench, Caravs Building, near Sheel Talkies, JABALPUR (M.P.)

Shri, P.S. Koshy learned counsel for the Petitioner.
Shri S. K. Beriwal, learned standing counsel for Union of India.

ORDER
(Passed on 29.08.2006)

The following order of the Court was passed by DILIP RAOSAHEB DESHMUKH, J.

In this writ petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the order of dismissal of Original Application No. 351/1992 dated 8th February 2000 passed by the Central Administrative Tribunal, Jabalpur (hereinafter

referred as the Tribunal) and order dated 27.7.1990 (Annexure P/2 whereby the services of the petitioner were terminated. Another order dated 16.4.1992 (Annexure P/3) whereby the petitioner's appeal against the order of his removal from service vide Annexure A/2 was rejected is also under challenge.

2. Brief facts are that the petitioner was working as Sorting Assistant attached to S. R. O. R. M. S., Raipur Division during the period 1982-1983 at Durg. Between 16.1.1983 to 26.1.1983 two insured parcels were missing from the R.M.S.Office containing *Payals* with definite imprint of "Kailash & Co.," weighing about 900 gms. of silver jewellery. Upon a report being lodged, criminal prosecution was launched against the petitioner alongwith one Bhagirathi and Premlal. A departmental enquiry was also initiated and thereafter he was placed under suspension. The following charges were framed against the petitioner:

"ANNEXURE – I

STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI R.V.MAGAR. S.A. (U/S) SRO RMS RP DN. DURG

Article: 1

That Shri R.V.Magar while working as Stg. Asstt. (U/S) attached to SRO RMS RP Dn. Durg during the period from 16.1.83 to 26.1.83 committed grave misconduct in as much as he was in illegal possession of part contents of Ahmedabad GPO Insured Parcel No. 880 dtd. 12.1.83 which was alleged to have been stolen from Durg RMS/3A on 16.1.83 and there by failed to maintain absolute integrity as required of him under Rule 3 (1) (i) of CCS (Conduct) Rule 1964 and he acted in a manner unbecoming of a Government servant as required of him under Rule 3 (1) (iii) of CCS (Conduct) Rules 1964.

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ANNEXURE – II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUS IN SUPPORT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI R.V.MAGAR, S.A. (U/S) DURG

Article: 1:

Ahmedabad GPO Ins. P.No. 880 dtd. 12.1.83 Insured for Rs.8500/- addressed to M/S Prem and Co. Jawahar Chouk, Durg and sent by M/S Kailash & Co., Ahmedbad was received by Durg RMS/3A dtd. 16.183 from Ratlam RMS/1 dtd 13.1.83 Parcel bag. The said Ins. Parcel was stolen from Durg RMS/3A dtd 16.1.83 which was reported to GRP Durg by the H.S.A. The GRP Durg, during investigation of this theft case recovered the silver ornaments (Payals—with definite imprint Kailash & Co) weighing 900 gms forming part of the contents of the above stolen Ins Parcel from the custody of Shri R.V.Magar on 26.1.83, which he was in illegal possession."

3. In Criminal case No. 1291/89, the Judicial Magistrate First Class vide judgment dated 10.12.1989 acquitted the petitioner after giving him the benefit of doubt since seizure memo Ex.P.5 by which the silver ornaments were seized from the petitioner was not proved. Independent witness Thakur Prasad P.W.6 did not support the prosecution story and the Investigating Officer was not examined. The Criminal Court held the factum of seizure of 66 items of silver ornaments "*Payal Patti*" weighing 2 kgs. and 100 gms vide Ex.P.3 each bearing the imprint "Kailash" from Prem Lal and accordingly convicted Prem Lal under Section 411 of the I.P.C. During the departmental enquiry, Shri Y. N. Dubey, the Police Officer who had seized the silver articles mentioned above from the petitioner herein proved the factum of seizure vide Ex.P.5. The

petitioner also did not deny the signatures on the seizure memo. On these premises, the disciplinary authority held the petitioner guilty of the charges. Consequently, vide order dated 27.7.90, the Senior Superintendent of Post Offices, Raipur Division ordered removal of the petitioner from service. The petitioner preferred an appeal against the aforesaid order which was also dismissed vide order dated 08-03-1991. A revision preferred by the petitioner was also dismissed by the Member (P) Postal Services Board, Government of India, Ministry of Communications, New Delhi vide Annexure P/3 on 16.4.1992. Being aggrieved, the O.A. No.351/1992 was filed by the petitioner before the Tribunal, which was also dismissed, vide order dated 8th February 2000 (Annexure P/1).

4. The petitioner has assailed the above mentioned orders Annexures P/1, P/2 and P/3 on the following grounds:

A) In view of the finding of the Criminal Court vide Judgment dated 10.12.1989 (Annexure P/5), it was established that the stolen articles were found in possession of Shri Prem Lal who was convicted for the aforesaid offence under Section 411 of the I.P.C. There was thus no occasion for the department to continue the departmental enquiry against the petitioner and give a contrary finding since the property in question could not be found in possession of two employees simultaneously.

B) The departmental witnesses did not give any statement against the petitioner in the departmental enquiry and the disciplinary authority held and relied upon the statement which was recorded behind the back of the petitioner.

C) The finding of the enquiry officer was thus perverse and based on unreliable evidence, and therefore, extraneous in nature.

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D) That the punishment was uncalled for and unwarranted.

5. Shri P.S.Koshy, learned counsel for the petitioner strenuously urged that co-accused Prem Lal had been convicted by the Criminal Court for possession of stolen articles weighing 2 kg and 100 grams (66 articles of *Pair Patti)* upon each of which the name of "Kailash" was imprinted. The petitioner could, therefore, not be held guilty for possession of the same articles during the departmental enquiry especially when the petitioner was acquitted in the criminal case. On the other hand, Shri S.K.Beriwal, learned standing Counsel for Union of India/respondents argued in support of the impugned order dated 8.2.2000 passed by the Tribunal.

6. The major thrust of the argument of Shri P.S. Koshy, learned counsel for the petitioner was the acquittal of the petitioner in the criminal case relating to theft of Ahmedabad Insured GPO Parcel No. 880 vide judgment dated 10.12.1989. Learned counsel for the petitioner contended that since Prem Lal, the co-accused was convicted for having been found in possession of the stolen articles upon which the name of "Kailash & Co.," was imprinted, the petitioner could not be found guilty in the departmental enquiry for the possession of those articles as two persons could not be found in possession of the same articles at the same time. However, this argument cannot be accepted. The charge framed against the petitioner and the statement of imputation of misconduct in support

of the charge clearly shows that the petitioner was alleged to have been found in possession of a part of the contents of the above referred Insured Parcel No. 880 and not the entire consignment. A perusal of the judgment rendered in Criminal Case No.129/1989 goes to show that neither the independent witnesses had supported the prosecution case relating to seizure of the stolen silver ornaments from the petitioner/accused nor did the prosecution examine the investigating officer. In this view of the matter, the petitioner was acquitted after giving him the benefit of doubt.

7. Shri P. S. Koshy, learned counsel for the petitioner then drew our attention to the last paragraph of page 5 of Annexure P/2 i.e. the impugned order dated 27.7.1990 ordering removal of the petitioner from service. In this paragraph, it emerges that during the departmental enquiry, out of the two witnesses of the seizure of the stolen articles, Shri V.K.Deshmukh did not attend the enquiry and the other witness Shri T.P.Kori did not support the prosecution story, though he admitted his signatures on the seizure memo. It was contended that since the independent witnesses did not support the factum of seizure of stolen articles, the charge against the petitioner was not proved. However, this submission was also bereft of any merit since the referred paragraph clearly shows that in the departmental enquiry Shri Y.N.Dubey, the Police Officer who had seized the stolen articles from the petitioner/accused was examined and had proved the seizure of stolen property from the

custody of the petitioner. It is also pertinent to note here that in the Criminal case the petitioner herein did not even claim ownership of the silver ornaments seized from his possession, as a result of which the articles were ordered to be returned to the consignee. In this view of the matter, acquittal of the petitioner in the criminal prosecution does not help the petitioner in any manner.

8. It is well settled that the burden of proving the charges is not as onerous on the department in a departmental enquiry as is in criminal prosecution. While in a criminal prosecution a charge has to be proved beyond the shadow of reasonable doubt, a departmental enquiry is decided on the basis of preponderance of probabilities while assessing the evidence and guilt of the delinquent-employee. In this view of the matter, the above argument of learned counsel for the petitioner cannot be accepted.

9. After having examining the impugned orders and the documents annexed to this writ petition with circumspection, we find that the petitioner at no point of time during the enquiry or while preferring an appeal or revision against the impugned order Annexure P.2 raised the issue that the articles alleged to have been recovered from him were either not the stolen property or proved to have been recovered from Prem Lal, the co-accused. The entire challenge of the petitioner was based solely on his acquittal in the criminal case which in the facts and circumstances mentioned

above could not come to his aid in the departmental enquiry in any manner.

10. Lastly, it was contended by Shri P.S.Koshy, learned counsel for the petitioner in the alternative that the penalty of removal from service was uncalled for and minor penalty should have been awarded. However, the above argument cannot be countenanced since the petitioner was a trustee of the properties entrusted to him while working as Sorting Assistant at the S.R.O. R.M.S. Division Raipur. The manner in which the petitioner committed breach of the above trust did not justify any leniency in the matter of awarding penalty. In our considered opinion, the penalty of removal from service was wholly justified in view of the grave misconduct committed by the petitioner.

11. Having thus considered the material on record, we are of the considered opinion that the Tribunal was wholly justified in dismissing O.A.No.351/1992.

12. We find no merit in this writ petition which is accordingly dismissed with costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani